



**Memorandum to:    Lawyers Practicing in Southern District of Texas Bankruptcy Court**

**From:                Karen K. Brown, Chief Judge**

**Subject:             Brown Bag Lunch Regarding Current Procedures and Proposed  
Changes to § 362 Motions and Orders in Consumer Cases**

**Date:                 January 5, 2006**

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You are invited to attend a Brown Bag Lunch in Judge Bohm's Courtroom at 11:45 a.m. on January 25, 2006.

New § 362 procedures were implemented on October 17, 2005. When those procedures were implemented, the Court announced its intention to review the procedures after about 60 days. A number of comments have been received with respect to possible changes. The comments that have been received have been considered and the Court has drafted changes to the current forms in order to accommodate many of the requests.

The Court also wishes to solicit any additional comments to current practice.

Accordingly, a Brown Bag Lunch will be conducted to receive comments on current procedures and on the draft changes to the current procedures. Copies of the draft changes are available at <http://www.txs.uscourts.gov/bkforms/newforms/newforms.htm>.

If you prefer, you may also make comments by e-mail sent to [comments@txs.uscourts.gov](mailto:comments@txs.uscourts.gov).

In general, the comments received to date have been very helpful. The following summary highlights the changes that are in the new drafts:

**1.     Payment Histories.** Two major changes. First, we have clarified an ambiguity as to whether payment histories must be included on vehicles. They must. Second, we have modified the language to emphasize the importance that the payment histories be decipherable. Many of the payment histories attached to date have been unintelligible. The draft language reads as follows:

*Debtor(s)' payment history is attached as exhibit "A." Movant represents that the attached payment history is a complete history reflecting all payments, advances, charges and credits. Movant further represents that the payment*

*history is self explanatory or can be interpreted by application of coding information that is also attached. Movant acknowledges that the Court may prohibit the use of parol evidence to interpret a payment history that does not satisfy these representations.*

**2. New Orders Based on Absence of Opposition.** In some instances, debtors are filing a statement of non-opposition, but are not signing agreed orders terminating the stay. New forms are drafted to allow these “non-oppositions” to result in stay terminations without the necessity of a hearing. See new proposed O-3A and change to current O-1. We are also seeing responses that counsel is unable to contact the debtor. With the additional burden that we are placing on movant to include a payment history, we believe that it is appropriate to place a burden on debtors to raise a contest. If the debtor fails to deny ANY allegation, we have provided a form of certification and order terminating the stay. See new proposed O-3B and change to current O-1. This procedure is not available if the debtor contests any allegation, no matter how minor.

**3. Changes to Post-Petition Payments.** All agreed orders conditioning stay have been modified to clarify the date of the next payment that is due. This is intended to resolve confusion about payments that come due after the agreement is signed, but before the Court issues an order. The parties must select a date that conforms to the amount of listed arrearage. In addition, the chapter 13 orders have been clarified to provide that—if a modification is required—mortgages are to be paid through the trustee.

**4. Homeowner’s Associations.** There are two major changes here. First, we have included a requirement in the standard mortgage order that requires debtors to remain current with homeowner’s associations. Second, we have included a new form of order (Form O-4A) that is for use only by homeowner’s associations or similar organizations.

**5. Changes to Requirement to File Modified Plan.** All chapter 13 agreed orders conditioning the stay have been changed to provide that no modification is required to be filed if there is no arrearage.

**6. Changes to Certifications.** Counsel certifications and statements in the proposed forms of orders have been amended to reflect that a trustee may have filed a statement of non-opposition. The current forms contain a representation that no response was filed.

**7. Changes to Signatures.** We have clarified that the proposed agreed orders may be signed by the debtors or their counsel or both.

In addition, there have been a number of changes that are only intended to clarify current language. They are marked on the attached redlines.

We do not propose any changes to current form M-1. It is attached (unchanged) solely for reference. All other orders have at least a minimal proposed change.

The new orders are:

**Form O-3A.** This is redlined against the original O-3. It is a proposed order terminating the stay after the debtor has filed a statement of non-opposition.

**Form O-3B.** This is redlined against the original O-3. It is a proposed order terminating the stay after the debtor has filed an answer, but not denied ANY of the factual allegations.

**Form O-4A.** This is redlined against the original O-4. It is an order conditioning the stay on homeowner's association motions.